

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE BEAR RIVER BASIN WATER SYSTEM

RECEIVED

DEC 06 2023

IDWR/Preston

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

CIVIL CASE NUMBER: 79576

Claim ID: 11-2128

Date Received: 12/6/23

Receipt No: C117467

Claim Fee: 50.00 By: MB

Please type or print clearly

1. Name of claimant(s) PacifiCorp Phone (801) 220-7803

Mailing address 1407 W North Temple Suite 110 Salt Lake City UT 84116
Street or Box City State Zip

Email address (optional) buffi.morris@PacifiCorp.com

2. Date of priority: (Only one per claim) 06/5/1912 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Ovid Creek
which is tributary to (b) Bear River

4. a. Location of point of diversion is: Township 13S, Range 43E, Section 1,
NE 1/4 of NE 1/4, Govt. Lot 5, BM, County of Bear Lake

Parcel no. _____

Additional points of diversion, if any: POD- Bern Dam

If available, GPS Coordinates 42°19'38.43"N 111°22'2.47"W

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,

Govt. Lot _____, BM, County of _____

Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,

Govt. Lot _____, BM, County of _____

5. Description of existing diversion works (dams, reservoirs, ditches, wells, pumps, pipelines, headgates, etc.), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.

~~Dam height 10 feet, length 100 feet, length at bottom 90 feet, material concrete headworks, earth and gravel fill. Boards are used to manually manipulate the elevation of the dam.~~

6. Water is claimed for the following purposes:

(dates are inclusive MM-DD) (cfs) (acre-feet)

For Irrigation purposes from 4/15 to 10/31 amount 4.37 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.37 (cfs) and/or (b) _____ (acre-feet)

8. Non-irrigation uses; describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) _____

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13s	44E	6					32	46	49	23	16	48	26	4					
13s	44E	7						34	34		2	26							
13s	43E	1			7	25					9			32	40	39	40	40	
13s	43E	12	40	39															

Parcel no(s) SEE REMARKS & NARRATIVE for TOTALS Total number of acres irrigated 649

10. In which county(ies) are lands listed above as place of use located? Bear Lake

11. Do you own the property listed above as place of use? Yes (☒) No (☐)
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.
111-1104, 11-1117, 11-2128 and NEW claim filed share same POD and share same POU or None (☐)

13. Remarks (Include an explanation of the priority date selected):

~~Priority date is based on 11-2128 backfile. Applicant, Heber C Kunz, remarks that irrigation has been in place on this property for at least 50 years prior to the application. SEE NARRATIVE~~

~~This claim is based on some attributes of 11-2128 which is a license for 247.5 acres. Number of acres noted in Section 9 reflect the combination of acres irrigated under 11-1104, 11-1117, 11-2128 and a NEW claim for a total of 649.0 acres~~

~~SEE NARRATIVE attached~~

Attachments:

Narrative

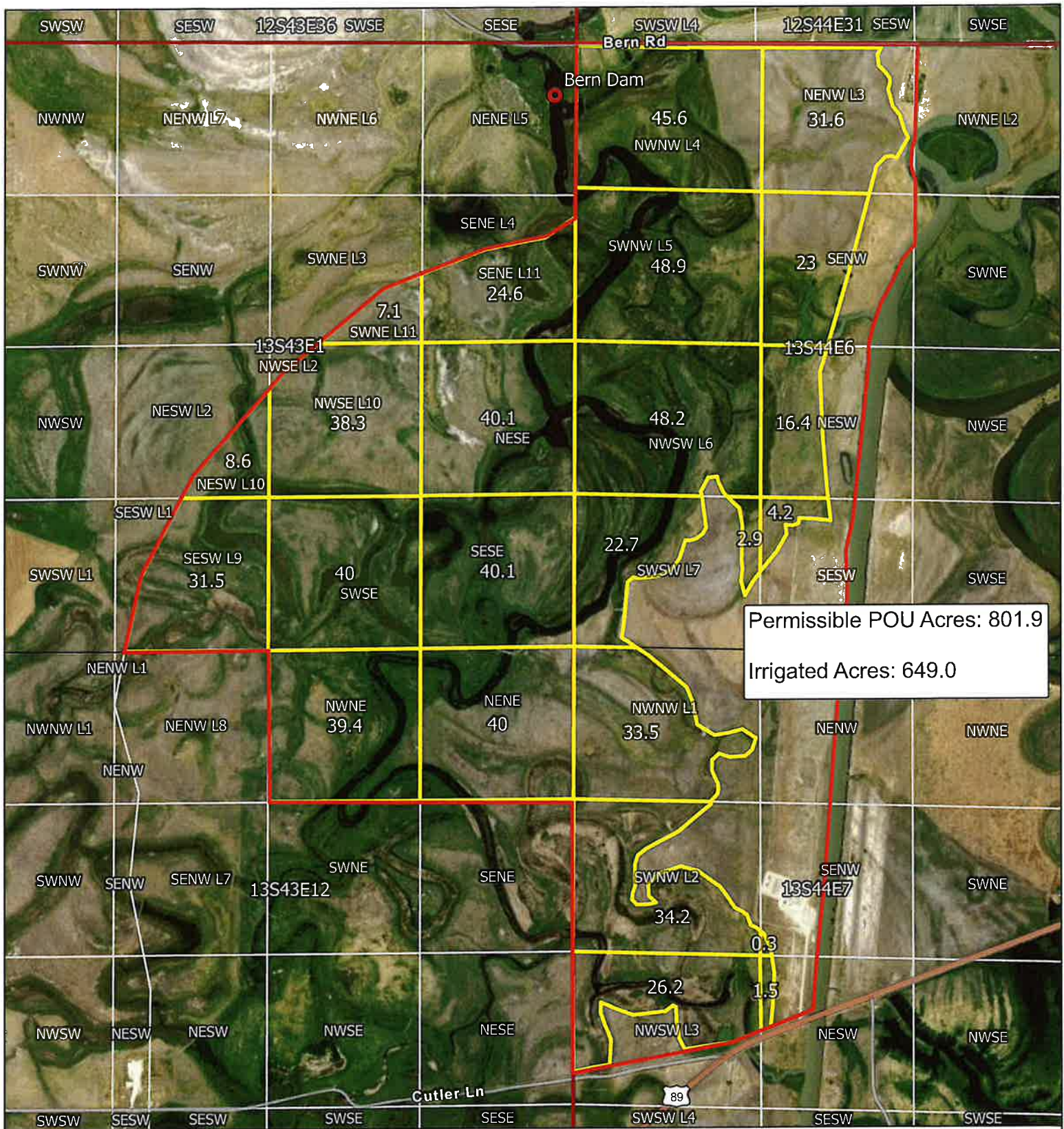
Map of decreed rights -POUs

Kunz Death Record

Affidavit from operator

Name of claimant(s) PacifiCorp

Claim ID _____



Permissible POU Acres: 801.9

Irrigated Acres: 649.0

0 0.25 0.5 1 Miles

NAIP 2021



- POD
- Irrigated
- Permissible POU
- QQs
- Sections
- Township & Range

**Claim Based on Rights 11-1104,
11-1117, 11-2128**

PacifiCorp Parcel IDBE-0164

Bear Lake County, ID

14. Basis of claim (Check one) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 11-2128 (based on) _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Bear River Basin Water System Adjudication."

(b.) I/We do (☐) do not (☒) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

Water Rights Administrator of Pacificorp
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Buffy Morris Date 10/25/2023

Printed Name of Authorized Agent Buffy Morris

16. Notice of Appearance:

Notice is hereby given that I, (please print) _____, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address _____

Name of claimant(s) PacificCorp Claim ID _____

Narrative for Bear River Basin Adjudication Claims

Based upon Water Right Nos.: 11-1104, 11-1117, 11-2128, and New Claim

PacifiCorp ID# IDBE-0164

This narrative describes four adjudication claims that pertain to the same property. They are a culmination of separate properties on which the water rights were originally developed, but have since been combined together and operated jointly.

2) Date of Priority

11-1104 and 11-1117- Based on 1982 Decree Hirschi vs. IDWR. Excerpts of the decree are attached.

11-2128 Priority is based upon the date that beneficial use began in 1912, determined using Mr. Heber C. Kunz statements and his death record, indicating he was born in 1898. In a letter to Department of Reclamation in 1962 (found in the water right backfile), Mr. Kunz stated that he wished to file on water rights that they had been using for 50 years. In 1912, Mr. Kunz would have been 14 years old, old enough to participate in the irrigation of the property. Therefore, the priority date for the claim based upon 11-2128 is April 15, 1912, when beneficial use began. It is recognized that for the purposes of the adjudication claim, a new water right number may need to be used to reflect a "new beneficial use" claim rather than continue using the licensed water right number of 11-2128, which has a licensed priority date of 1962.

Enlargement claim – Priority is based on the day after the 1982 decree. The attached affidavit from Marvin Robertson confirms that by the 2000 irrigation season, when he began leasing the land, irrigation of the claimed lands was occurring. And the 1992 DOQ imagery suggests that the entire irrigated area was under irrigation by this year also. No imagery is available between 1982 and 1992 to review.

4) Point of Diversion

A single Point of Diversion for all of the claims is commonly known as the Bern Dam. There are multiple places throughout the place(s) of use where water is manipulated and diverted to irrigate as much ground as possible. The originally decreed rights, 11-1104 and 11-1117, show different points of diversion, however, the Bern Dam has been the main POD as long as claimant has owned the property. 11-2128 describes Bern Dam as the POD.

5) Diversion Works

Bern Dam, located in the NENE Sec 1, T13S R43E Gvt Lot 5, B.M. As described in 11-2128- Dam height- 10 feet, length- 100 feet, length at bottom- 90 feet, material- concrete headworks, earth and gravel fill. Boards are used to manually manipulate the elevation of the dam.

6) Water Claimed for following purposes:

For 11-2128- No period of use dates are described in the current license. Period of use claimed for all rights are based on IDWR guidelines for the season of irrigation in the Bear River Basin.

9) Place of Use

The place of use is described as a Permissible Place of Use (PPU).

All water rights are used in combination to irrigate 649 acres within the 802-acre PPU. 11-1104 and 11-1117 have an acre-limit based upon the original decreed acres, and appear to be limited to the irrigation of 340.7 acres in combination. 11-2128 adds 247.5 acres to the total allowable acres. Total irrigated acres authorized by current recorded rights appear to be 588.2 acres. The beneficial use claim for enlargement increases the total irrigation by 60.8 acres.

11-2128	247.5 acre-limit
11-1104	79 acre-limit
11-1117	340.7 acre-limit
Enlargement	60.8 acres

The claim map provided illustrates the area now irrigated by the combination of these 4 rights. A total of 649.0 acres were irrigated between 2016-2021. This appears to be an accomplished transfer from the 1982 decreed POUs and the licensed POUs.

POU Overlap Question

If evaluating the POU description of 11-1104 and 11-1117 in the decree and the licensed POU of 11-2128, it appears that the rights overlap. Figure 1 illustrates the POUs as originally described. However, in reviewing the decree or various properties, it is obvious that there were multiple errors in describing the places of use and points of diversion that resulted in unintentional overlaps for the plaintiffs.

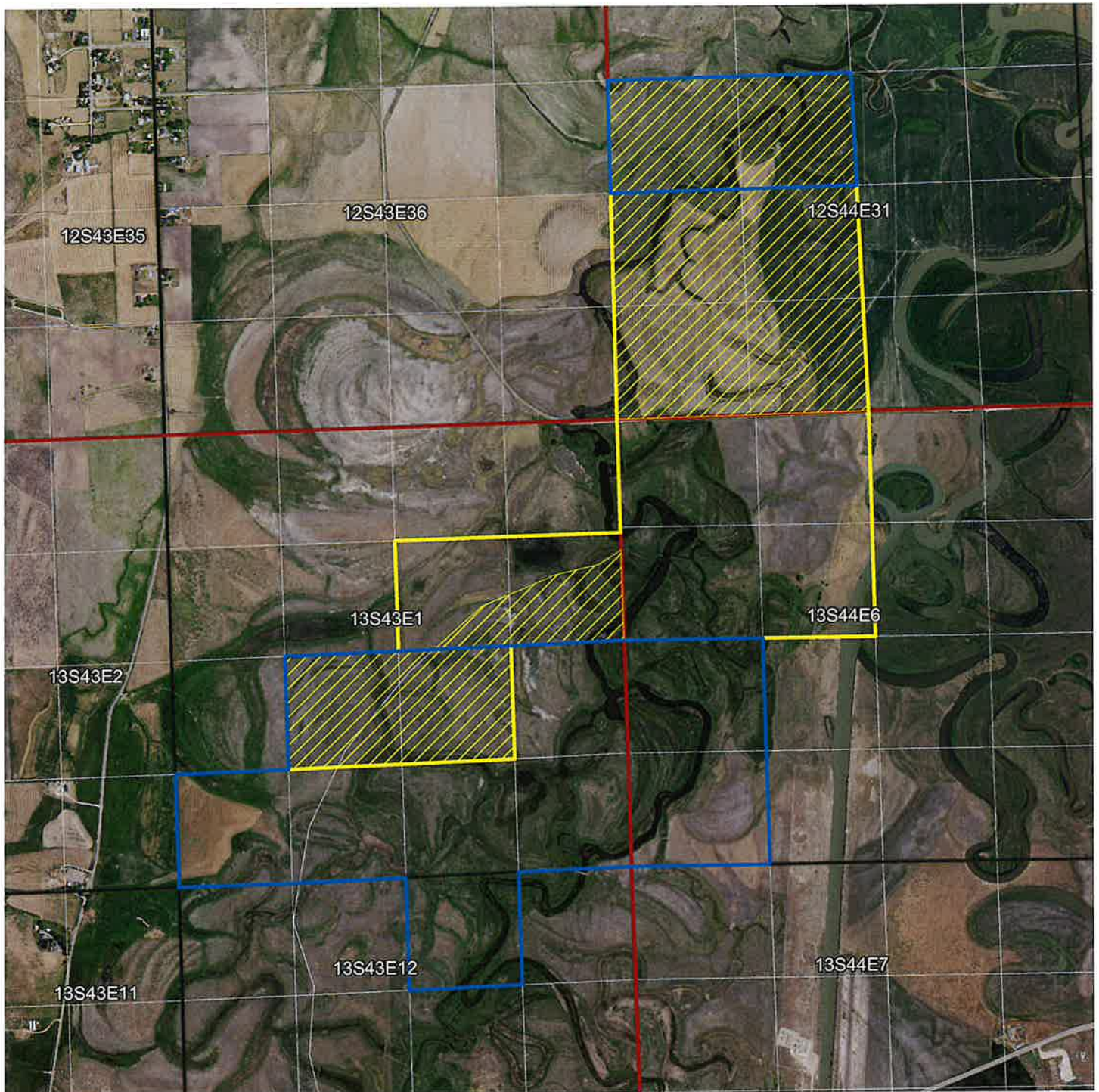
The permit application for 11-2128 was filed by Heber C. Kunz in 1962 in an effort to reflect historical irrigation practices. Since the Idaho Statute 42-243 did not exist at the time, and no decree had yet been issued on Ovid Creek, this was Heber's attempt at recording his historical water use. Heber then deeded the property to his son, Charles C. Kunz, who deeded it to Pacificorp (see deeds in water right backfile). Charles C. Kunz owned the licensed POU of 11-2128 at the time of the 1982 decree, yet he was not included in the decree. Since the 1982 decree was not a general adjudication of Ovid Creek, it is likely that Charles Kunz's property and water right were excluded since they were already recorded and recognized by the State. The decree is silent on existing licenses and appears to focus solely on the water rights owned by the plaintiffs. Right 11-2128 was not developed or historically used on the same lands as 11-1104 and 11-1117.

Therefore, the apparent overlap of the decreed and licensed acres are interpreted to be in error and the rights do not have overlapping POUs.

Figure 1.

Attached Decreed and Licensed POUs

Decreed and Licensed POU's



Base Map: USDA NAIP 2021

1,700 850 0 1,700 Feet

Date Created: 10/12/2023



-  Licensed POU 11-2128
-  Decreed POU 11-1104
-  Decreed POU 11-1117
-  TR
-  Section
-  QQ



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Eastern Idaho Death Records

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Detailed information for Heber Christian Kunz

[▶ New Search](#)

ID:	55858
Last Name:	Kunz
First Name:	Heber Christian
Age:	
Gender:	M
Cemetery:	Bern, Idaho
Birth Date:	7 Dec 1898
Birth Place:	Pegram, Idaho
Date Died:	13 Jun 1966
Death Place:	Bern, Idaho
Father:	John Kunz III
Mother:	Margaret Lauener
Spouse:	Marie Clark
Sources:	Cemetary Records.
Remarks:	

Send feedback to: Idaho Falls Regional Family History Center
750 West Elva, Idaho Falls, Idaho 83402
Phone: (208) 524-5291 E-Mail: elobits@cs.com

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BYU-Idaho SpecialCollections: [McKay Library 240A](#), Rexburg, ID 83460 | familyhistory@byui.edu

Family History Lab: (208) 496-2386

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Affidavit of Marvin Robertson
Irrigation from Ovid Creek and Bear River
Bear Lake County, Idaho

My name is Marvin Robertson and I have been acquainted with the irrigation represented on the attached map since 2000. I leased the property from PacifiCorp from 2000 to 2019 and personally irrigated the property.

The attached map titled Claims Based on 11-1104, 11-1117, 11-2128 is accurate in describing the acres irrigated during the time I operated and irrigated the property. I have initialed the map in the bottom portion of the map.

AND ADDITIONAL AREA MARKED IN RED M R

Areas within the yellow boundary of the map correctly represents the irrigable property and were irrigated when water was available from Ovid Creek. Water was manipulated by berms and ditches within the boundary.

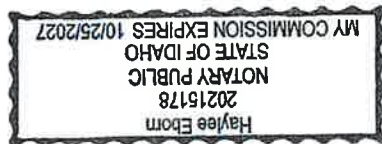
I affirm that this statement is correct and that I myself have done and seen the things I have described.

Mr. R 9-13-23
Marvin Robertson (date)

State of Idaho

County of Bear Lake

This document was signed before me by Marvin Robertson
on 9/13/23 (date) (name)



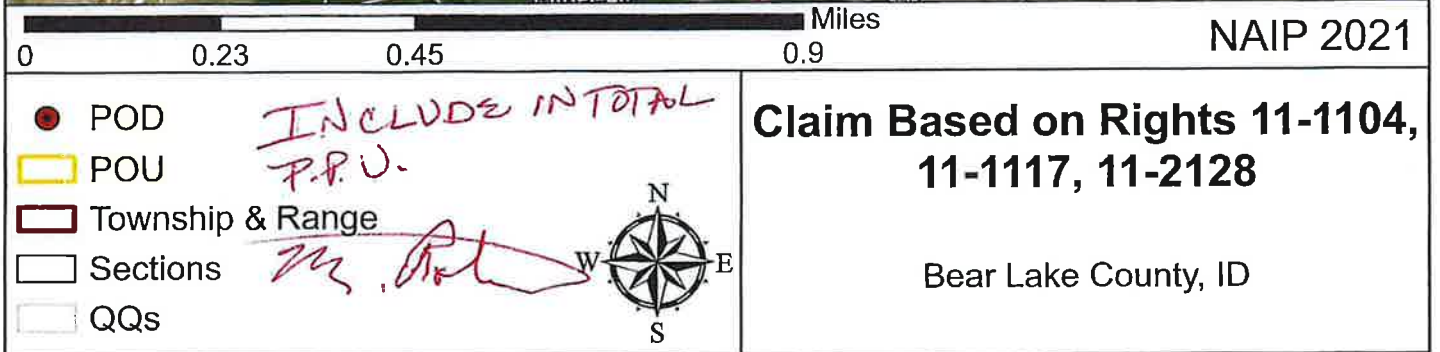
Haylee Eborn
(notary signature)

My commission expires 10/25/2027





Total Acres: 511.4



Ovid Creek Irrigation Claims

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Claim ID	\$ for Claim	Notes
11-1114	\$548.00	Ovid North - 498 acre POU shared
11-1096	\$50.00	Ovid North - same acres as 11-1114
11-1115	\$50.00	Ovid North - same acres as 11-1114
11-1116	\$50.00	Ovid North - same acres as 11-1114
11-1104	\$699.00	Ovid South - 649 acre POU shared
11-1117	\$50.00	Ovid South - same acres as 11-1104
11-2128	\$50.00	Ovid South - same acres as 11-1104
New Claim	\$50.00	Ovid South - same acres as 11-1104
Total	\$1,547.00	

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Claimant:

Claim ID:

Pacificorp
11-2128

De Minimis

Non-De Minimis

Irrigation

Power Generation

Aquaculture

Municipal, industrial,
commercial, mining, heating,
cooling

Public instream flow, public lake
level maintenance, wildlife

Fire protection

Groundwater recharge

Total

**Duplicate this worksheet once
for each claim.**

Note:

Ovid South - same acres as 11-
1104

Rate/Unit	Unit	# Units	\$ Amount
\$25	Claim		
\$50	Claim	1	\$50.00
\$1	Acre		
\$3.50	KW of Capacity		
\$10	cfs		
\$100	cfs		
\$0	cfs		
\$0	cfs or afa		
			\$50.00

Instructions for Form No. 42-1400-1

Revised January 30, 2021

FILING FEES

Each claim submitted must include the filing fee. The filing fee for domestic and/or stockwater use claims diverting less than 13,000 gallons of water per day is \$25.00. However, if you are filing more than four (4) claims in which the only purpose of use listed is stockwater, only the first four (4) claims require the \$25.00 filing fee. All additional stockwater claims are fee exempt once the \$100.00 in filing fees has been paid for the first four (4) stockwater only claims filed after July 1, 2017.

The flat fee for filing all other claims filed is \$50.00 per claim. An additional variable filing fee based upon acreage, power generating nameplate capacity, cubic feet per second (cfs) amount, or an equivalent volume of storage water is required for claims for water uses other than domestic and/or stockwater uses diverting less than 13,000 gallons of water per day. Use Table 3 to calculate the variable fee. Add the calculated variable fee to the \$50.00 flat fee to determine the total fee for the claim. The exceptions are fire protection or ground water recharge which have a \$50.00 flat fee, and no variable fee.

Examples for a single claim to a water right with single source and same priority date:

Single family domestic and stockwater use, less than
13,000 gallons per day in total \$25.00

100 acres irrigation, domestic and stockwater as above \$150.00

Fish propagation, 4.2 cfs \$92.00

Multiple family domestic, 1.6 cfs,
irrigation of yards and gardens, 14 acres \$224.00

TABLE 3, VARIABLE FEE SCHEDULE

Irrigation	\$1.00 per acre	Each acre is charged only once
Power generation	\$3.50 per kilowatt of capacity	Manufacturer's nameplate rating, or \$250,000.00, whichever is less
Aquaculture	\$10.00 per cfs	
Domestic stockwater use in excess of 13,000 gallons per day	\$100.00 per cfs	
Municipal, industrial, commercial, mining, heating, cooling	\$100.00 per cfs	
Public instream flow, public lake level maintenance, wildlife	\$100.00 per cfs	
Exceptions: No variable fee is charged for fire protection or ground water recharge		

PERKINScoie

1111 West Jefferson Street
Suite 500
Boise, ID 83702-5391

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+1.208.343.3232
PerkinsCoie.com

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DEPARTMENT OF
WATER RESOURCES

Erika E. Malmen
EMalmen@perkinscoie.com

December 6, 2023

VIA HAND DELIVERY

Idaho Department of Water Resources
322 E. Front Street
Boise, ID 83702

**Re: PacifiCorp
Notices of Claims to Water Rights
Bear River Basin Adjudication**

To whom it may concern:

Enclosed please find a check in the amount of \$4,485.50 for the filing fees for the group of Notices of Claims to Water Rights filed by PacifiCorp on or about October 25, 2023, together with the filing fee pages for each submission. The following is a summary of the filing fees:

1. Ovid and Soda Stockwater Claims (9 claims)	\$ 100.00
2. Ovid Creek Irrigation Claims (7 claims + New)	\$1,547.00
3. Lifton Claim (11-4004)	\$ 83.00
4. Soda Domestic & Irrigation (11-2084 + New)	\$ 203.00
5. <u>Paris Claim (11-0086)</u>	<u>\$2,552.50</u>

Total: \$4,485.50

At your earliest convenience, please email the claim numbers assigned to each claim to: emalmen@perkinscoie.com. Thank you for your assistance. Please contact us if you have any questions.

December 6, 2023

Page 2

Sincerely,

A handwritten signature in cursive script, appearing to read "Erika E. Malmen", followed by a horizontal line.

Erika E. Malmen

Enclosures